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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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| SAN FRANCISCANS SUPPORTING PROP B, *et al*,<br><br>*Plaintiffs*,<br><br>v.<br><br>DAVID CHIU, *et al.*,<br><br>*Defendants*. | No. 3:22-cv-02785-LB<br><br>**NOTICE OF MOTION AND MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES**<br><br>Hearing date: TBD<br>Hearing time: TBD<br>Courtroom: TBD<br>Judge: Honorable Laurel Beeler |

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## NOTICE OF MOTION AND MOTION

To all parties and their counsel of record:

Please take notice that, as soon as the matter may be heard, before the Honorable Laurel Beeler of the United States District Court for the Northern District of California, Plaintiffs will and hereby move the Court under Rule 65 of the Federal Rules of Civil Procedure and Local Rules 7-1 and 6-2, for a temporary restraining order and for a preliminary injunction prohibiting Defendants and their officers, agents, divisions, commissions, and all persons acting under or in concert with them, from enforcing requirements that speakers disclose the top donors to the speakers' top donors on their communications ("on-communication secondary donor disclosure") at S.F. Campaign and Governmental Conduct Code ("S.F. Code") § 1.161(a), https://bit.ly/3MzrSXp.

Plaintiffs request that bond be waived or set in the amount of $1.00. This Court has discretion to waive the security requirements of Fed. R. Civ. P. 65(c) or require only a nominal bond. *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999). "Courts [in the Ninth Circuit] also have denied bond requirements where the plaintiff was pursuing litigation that would vindicate important constitutional rights." *Thomas v. Cty. of Riverside Sheriff's Dep't*, No. EDCV 10-01846 VAP(DTBx), 2011 U.S. Dist. LEXIS 164992, at *80 (C.D. Cal. July 7, 2011) (quotation marks omitted) (compiling cases). Given that Plaintiffs seek to vindicate important First Amendment rights, the Court should waive the bond requirement or set bond at a nominal amount.

## MEMORANDUM OF POINTS AND AUTHORITIES

### INTRODUCTION

The City and County San Francisco ("City" or "San Francisco") coopts speakers' messages about candidates and measures, forcing speakers not just to replace part of their message with the City's speech, but to make the City's message the focus of any message. The City forgets that "the First Amendment 'has its fullest and most urgent application'" in the context of "[f]ree discussion about" political issues like candidacies

and ballot measures. *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)).

To coopt a speaker's message, the City must show that it has a compelling or important interest and that its compelled speech—a requirement that speakers state in their communications the donors to their donors—are narrowly or sufficiently related to that interest. This the City cannot do. It already satisfies the only possible interest—that in informing the public about those who wish to financially support a candidate or measure—by demanding that speakers disclose donor information to the City, which the City then publishes for anyone surfing the web from the comfort of their living room couch to review. S.F. Code § 1.110(a).

But that is not enough for the City. It demands that speakers include their top three donors in any communication and, if any of those donors is a committee, the donor's top two contributors. And internet video advertisements must begin with this information, distracting and driving away listeners before they have even heard the speaker's message. This violates a speaker's right to decide "what to say and what to leave unsaid." *Hurley v. Irish-American Gay, Lesbian and Bisexual Grp.*, 515 U.S. 557, 573 (1995) (quotation marks omitted).

Moreover, the City's compelled messaging cannot inform voters because it in fact misleads them, making them believe that secondary donors who may in fact oppose a message have supported a candidate or measure. Indeed, given that this misleading disclosure may harm secondary donors' reputations, it will keep primary donors like Plaintiff Edwin M. Lee Asian Pacific Democratic Club PAC sponsored by Neighbors for a Better San Francisco Advocacy ("Ed Lee Dems") from supporting messages they would like to share in and from associating with allies like San Franciscans Supporting Prop B ("SPB" or "Committee").

Todd David formed SPB to support the passage of San Francisco Charter Amendment B ("Prop B" or "Proposition B"), but given that the compelled speech requirements frighten away donors, make it impossible to share many of its messages,

and too alter the content of others, the Committee will not speak absent injunctive relief against the on-communication secondary donor disclosure requirements at S.F. Code § 1.161(a).

## STATEMENT OF ISSUES TO BE DECIDED

Whether the on-communication secondary donor disclosure requirements at S.F. Code § 1.161(a) are unconstitutional and should be enjoined.

## STATEMENT OF FACTS

### I. PLAINTIFFS

Plaintiff SPB is a primarily formed independent expenditure committee, registered with the California Secretary of State and required to file campaign reports with the San Francisco Ethics Commission. David Decl. ¶ 3. Todd David formed the Committee with the goal of supporting Prop B, which would change the duties, composition, and appointment method for the Building Inspection Commission. *Id.* ¶ 4.

As the Committee's treasurer, Todd David oversees the Committee's fundraising and expenditures. *Id.* ¶ 2. Mr. David has substantial experience in San Francisco politics, including past management of the San Francisco Parent PAC and other primarily formed committees. *Id.* ¶ 23. But while the City's on-communication secondary donor disclosure demands remain, Mr. David and the Committee will be unable to share their messages with voters, in this or future elections. *Id.* ¶¶ 22, 25.

Plaintiff Ed Lee Dems is a grassroots organization dedicated to engaging Asian Pacific Islander ("API") Americans in the Democratic Party, supporting strong API leaders, and empowering young API people in the political process. Cheng Decl. ¶ 3. It also works to benefit the API community and San Franciscans in general by advocating for increased neighborhood safety; affordable housing and health care; supporting local public schools, public transportation, and public parks; and furthering civil rights, women's rights, and LGBT rights. *Id.* ¶ 4. Ed Lee Dems is supporting the Committee's efforts because Prop B's reforms will help fight San Francisco's affordable housing problems. *Id.* ¶ 5.

As long as the City's requirements are in place, however, Ed Lee Dems cannot support any efforts by SPB or other committees that would result in on-communication disclosure of its donors. *Id.* ¶¶ 8, 11. Such disclosure will scare away donors to Ed Lee Dems, and it would undermine the organization's mission. For example, disclosure of David Chiu as a secondary donor would imply that he is improperly supporting an issue before the City, damaging the reputation of a prominent member of the API community. *Id.* ¶ 7.

## II. SAN FRANCISCO'S DISCLOSURE AND COMPELLED SPEECH REGIME

San Francisco expands on the campaign disclosure regime required "by the California Political Reform Act, California Government Code Section 81000 *et seq.*" S.F. Code § 1.112(a)(1). Any statement required by the state must also be filed "in an electronic format with the Ethics Commission." *Id.*

### A. California's already comprehensive regime

California defines a committee as "any person or combination of persons who directly or indirectly" receives $2,000 or more in contributions or makes $1,000 or more in independent expenditures. Cal. Gov't Code § 82013. A "'Primarily formed committee' means a committee . . . which is formed or exists primarily to support or oppose . . . [a] single candidate [or] . . . single measure." Cal. Gov't Code § 82047.5.

A committee must file a "statement of organization . . . with the Secretary of State" and "the local filing officer," here the S.F. Ethics Commission, "within 10 days" of qualifying as a committee. Cal. Gov't Code § 84101(a). Committees are required to file reports at various times. *See* Cal. Gov't Code §§ 84200(a) (semiannual); 84202.3 (adding dates on quarters); 84200.5 (preelection); 84200.8 (preelection).

Those forced to register as committees must report the total "contributions received during the period covered by the campaign statement and the total cumulative amount of contributions received." *Id.* § 84211(a). They must state the total contributions received by donors contributing $100 or more and then state the total given by those contributing less. *Id.* § 84211(c) and (d). And then the reporting

requirements become really specific: If any donor has given aggregate contributions of $100 or more to the committee, and that donor has given any money to the committee during that reporting period, the committee must give the donor's full name, street address, occupation, and employer, as well as the date and amount of the contribution during the period and the total contributions the person has given. *Id.* § 84211(f).

Furthermore, California calls any contribution aggregating $1,000 or more that is given within 90 days of an election a "Late contribution," and it requires that committees report such contributions within 24 hours of receiving them, including "the date and amount of the late contribution" and the contributor's full name, "street address, occupation, and the name of the contributor's employer." *Id.* §§ 82036, 84203. Thus, in the months preceding an election, the public has near realtime access to information about a committee's top donors, through both the state and the San Francisco Ethics Commission. S.F. Code §§ 1.110(a), 1.112(a)(1).

In addition to disclosing donors to the government, California has strict content and format requirements for communications by ballot measure committees. *See* Cal. Gov't Code §§ 84501-84511. For example, a communication must state, "'Ad paid for by'[,] followed by the name of the committee." *Id.* § 84502(a)(1). The committee's name must include the proposition number or letter, and whether the committee supports or opposes the measure. *Id.* § 84107.

After the disclaimer, committees must then add top donor disclosure: each communication must state, "'committee major funding from' followed by the names of the top [three] contributors to the committee," *id.* § 84503(a), who have given "cumulative contributions of" $50,000 or more, *id.* § 84501(c)(1). Strict requirements govern how this information must be communicated. *See id.* §§ 84504 (radio and telephone); 84504.1 (video); 84504.2 (print ads); 84504.3 (electronic media); 84504.6 (online platforms).

B. San Francisco intensifies the compelled speech requirements

While incorporating all of the state's campaign finance reporting regime, San

Francisco multiplies the compelled speech requirements. Not only must a speaker disclose its own name and the names of its top three donors, but it must disclose on the face of each communication the top two donors of each of their top three donors. S.F. Code § 1.161(a)(1). In addition, San Francisco lowers the threshold for donor reporting, demanding disclosure for donors who have given $5,000 or more, not just those who gave $50,000 or more. *Id.* Except for audio and video communications, the ad must note the amount given by each of these nine donors. *Id.*; S.F. Ethics Comm'n, *Regulations to Campaign Finance Reform Ordinance San Francisco Campaign and Governmental Conduct Code*, § 1.161-3(a)(4) ("S.F. Reg."), https://bit.ly/3KK5WYe.

After listing a committee's three largest donors, a communication must further tell voters that the speaker's financial disclosures, which the speaker has turned over to the City and includes the just-named top donors, may be found at the Commission's website. S.F. Code § 1.161(a)(2); *see* City and Cty. of S.F. Ethics Comm'n, *Independent Expenditure Ads Referring to City Candidates*, https://bit.ly/38l7KcE (emphasis in original) ("IE Reg.") ("**Financial disclosures are available at sfethics.org**" (emphasis in original).

*1. Print communications (e.g., mailers and newspaper ads)*

For print ads designed to be individually distributed, such as mailers and newspaper ads, the text must be at least as big as Arial 14-point font. *Id.* The "Committee major funding" statement and each of the primary contributors must begin a separate line. *Id* (emphasis omitted). The line for each of the primary donors "must be numbered by placing the numerals 1, 2, and 3, respectively, before each" donor's name. S.F. Reg. § 1.161-3, https://bit.ly/3KK5WYe. The words "contributors include" must follow each of the primary donors, that followed by the secondary donors who gave to that primary donor. *Id.* With the disclaimer announcing the speaker's name, the three primary donors, and notice where to find financial disclosures, the disclosure requirement must take up at least 5 lines.

In practice, for communications like those SPB wishes to run, the City's

requirements will capture much if not most of a speaker's message. Given the Committee's donors, the disclaimer required here will consume 100% of a two by four inch newspaper "ear" ad, about 70% of a five by five inch ad, about 35% of a five by ten inch ad, and about 23% of an 8.5 by 11 inch mailer. *See* David Decl., ¶¶ 16-18; Exs. 2-5.

*2. Audio and video communications*

San Francisco requires that the disclaimer and on-communication disclosure be the focus of an audio or video communication—the first thing the audience sees and hears. S.F. Code § 1.161(a)(5). Such communications must begin stating "**Ad paid for by [committee's name]**." IE Reg. (emphasis in original). The on-communication disclosure follows: "**Committee major funding from [name(s) and dollar amount contributed of top three (3) donors of $5,000 or more],**" with each of those primary contributors followed by their "**top two (2) contributors of $5,000 or more**." *Id*. Audio and video communications must then state, "**Financial disclosures are available at sfethics.org**." *Id*.

The City also requires that video communications carry a written banner with the disclosure. The written statement is similar to that for print ads. The "Committee major funding" statement and each of the primary contributors must begin a separate line. *Id*. The line for each of the primary donors "must be numbered by placing the numerals 1, 2, and 3, respectively, before each" donor's name. S.F. Reg. § 1.161-3. The words "contributors include" must follow each of the primary donors, that followed by the secondary donors who gave to that primary donor. *Id*. With the disclaimer announcing the speaker's name, the three primary donors, and notice where to find financial disclosures, the disclosure requirement must take up at least 5 lines.

This banner must last for at least 17% of the time that shorter ads run, and up to 33% of the time longer ads run. IE Reg. ("at least five (5) seconds of a broadcast of 30 seconds or less or for at least 10 seconds of a broadcast longer than 30 seconds"). It requires that "[e]ach top contributor . . . be disclosed on a separate horizontal line,"

and the entire compelled message with top donor information must take up "one third of the display screen" that the audience sees. *Id.*

In practice, the burden on a speaker is much greater. It takes 32-33 seconds to speak the City's compelled message. David Decl. ¶¶ 12-13. This consumes 100% of a 15-second ad, 100% of a 30-second ad, and 53-55% of a 60-second ad. *Id.* ¶ 14. The shorter length ads are the most preferred and effective, Derse Decl. ¶¶ 10-11, Sinn Decl. ¶¶ 8-9, yet the City's compelled speech denies the Committee the ability to use either 15- or 30-second ads. Sinn Decl. ¶ 10; David Decl. ¶ 14.

*3. Penalties and enforcement*

The City punishes violations of the on-communication donor disclosure requirement with criminal, civil and administrative penalties. S.F. Code § 1.170. Knowing or willful violations are misdemeanors, punishable by fines up to $5,000 for each violation, up to six months in county jail, or both. *Id.* at § 1.170(a). Failure to report contributions or expenditures is punishable by the greater of $5,000 or three times the amount not reported. *Id.* Intentional or negligent violations are punished with civil fines up to $5,000 for each violation or three times the amount not reported. *Id.* at § 1.170(b). Any other violations are punished administratively, with the same potential fines. *Id.* at § 1.170(c); San Francisco Charter, appendix C, § C3.699-13(c)(i)(3), https://bit.ly/3KP3SOI. If a committee does not comply with the on-communication donor disclosure requirement, its "treasurer[] . . . may be held personally liable for violations." S.F. Code § 1.170(g).

Any individual "may file a complaint with the Ethics Commission, City Attorney, or District Attorney," who are required to investigate the complaint. S.F. Code § 1.168(a). Upon belief that a violation has occurred, the Commission must forward any complaint it receives to the district attorney and City attorney. San Francisco Charter, appendix C, § C3.699-13. "The City Attorney . . . may bring a civil action to enjoin violations of or compel compliance . . . ." *Id.* at § 1.168(b). If the City attorney and district attorney do not take action, the Commission may conduct its own investigation

and initiate an enforcement hearing. San Francisco Charter, appendix C, § C3.699-13.

## III. IMPACT ON PLAINTIFFS' SPEECH

The Committee is a primarily formed independent expenditure committee formed to support the passage of Prop B. David Decl. ¶¶ 3-4. Plaintiff Todd David is the treasurer of the Committee and oversees its fundraising and expenditures. *Id.* ¶ 2. The Committee wishes to support the measure with 8.5 by 11 inch mailers; 2 by 2 inch ear ads, 5 by 5 inch ads, and 5 by 10 inch ads in newspapers; and internet ads of varying lengths, including 15-, 30-, and 60-second ads. *Id.* ¶ 5. All these ads will trigger San Francisco's on-communication disclosure requirements.

To date, the Committee has raised $15,000, including $5,000 each from Concerned Parents Supporting the Recall of Collins, Lopez and Moliga ("Concerned Parents"); BOMA SF Ballot Issues PAC; and Edwin M. Lee Asian Pacific Democratic Club PAC sponsored by Neighbors for a Better San Francisco Advocacy ("Ed Lee Dems"). *Id.* ¶ 6. The Committee hopes to raise further funds, including additional $5,000+ contributions. *Id.* ¶ 8. Potential contributors have expressed concern about the secondary donor disclosure requirements and are reluctant to contribute if their donors must be disclosed on the Committee's communications. *Id.* ¶ 20.

Two of the Committee's major contributors, Concerned Parents and Ed Lee Dems are themselves committees that have received $5,000 or more from donors, triggering the secondary donor on-communication disclosure requirement. David Decl. ¶ 7.

Plaintiff Ed Lee Dems works to empower young Asian Pacific Islander ("API") people in the political process and to support strong API leaders. Cheng Decl. ¶ 3. It also sustains the API community by advocating for better neighborhood safety, public parks, public transportation, and public schools; for affordable housing and health care; and for civil rights, women's rights, and LGBT rights. *Id.* ¶ 4. Ed Lee Dems believes that Prop B will benefit the community by bringing needed reform to the Building Inspection Commission, and that contributing to SPB would help get that message out. *Id.* ¶ 5.

Ed Lee Dems cannot support the Committee, however, if the Committee makes any communications that would trigger the on-communication secondary donor disclosure. *Id.* ¶ 11. Doing so could harm the reputations of leaders that it wants to uphold as part of its mission, including City Attorney David Chiu, and it would lose the support of donors if they knew it was supporting groups that triggered the on-communication secondary donor disclosure. *Id.* ¶ 9.

Furthermore, the City's compelled speech requirements will make the Committee's messages impossible or ineffective. Taken together, the requirements will take 32-33 seconds to state, thus consuming 100% of the Committee's 15-second and 30-second internet video ads and 53-55% of the 60-second ads. David Decl. ¶¶ 13-14. They will take up at least 33% of the screen during the first 5 seconds of the 15-second video ads and the first 10 seconds of the longer ads. IE Reg.[1] For the Committee's newspaper ads, the disclaimer would consume 100% of the two by four inch ads, 70% of the five by five inch ads, and 35% of the five by ten inch ads. David Decl. ¶¶ 16-17. And they would consume 23% of the face of an 8.5 by 11 inch mailer. *Id.* ¶ 18.

The Committee and Mr. David would like to share its messages in support of Prop B, without the on-communication secondary donor disclosure the City demands, but it refrains from doing so because it fears the penalties for exercising its First Amendment rights. Accordingly, they will refrain from speaking absent a restraining order and further injunctive relief. David Decl. ¶¶ 25-26.

Furthermore, Mr. David has long been active in San Francisco politics, creating primarily formed and other committees to advocate about measures and candidates, including the San Francisco Parent PAC and Yes on Prop B, Committee in Support of the Earthquake Safety and Emergency Response Bond. David Decl. ¶¶ 23-24. Mr. David will create primarily formed committees in future elections, but San Francisco's

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[1] Under state law, such disclaimers use up 33% of the screen. If San Francisco's 4% line height rule were used, the Committee's disclaimer would use up approximately 51% of the screen. David Decl. ¶ 15.

requirements will continue to limit the messages that Mr. David and his committees will be able to share. David Decl. ¶ 25. The law will also continue to inhibit others from associating with and supporting the messages of Mr. David and his committees. David Decl. ¶ 8; Cheng Decl. ¶¶ 8-9, 11. Ed Lee Dems, in particular, will be unable to support Mr. David's or other committees as long as San Francisco requires on-communication secondary donor disclosure. Cheng Decl. ¶¶ 8-9, 11.

## ARGUMENT

The Court should grant Plaintiffs' request for a temporary restraining order and a preliminary injunction because (1) they "are likely to succeed on the merits;" (2) they will "suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest." *Short v. Brown*, 893 F.3d 671, 675 (9th Cir. 2018) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). "When the government is a party, these last two factors merge." *East Bay Sanctuary Covenant v. Garland*, 994 F.3d 962, 975 (9th Cir. 2021) (citations omitted). The Court's "analysis is substantially identical for the [preliminary] injunction and the TRO." *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

### I. PLAINTIFFS ARE LIKELY TO ESTABLISH THAT SAN FRANCISCO'S COMPELLED SPEECH FAILS FIRST AMENDMENT SCRUTINY.

San Francisco's demand for secondary on-communication disclosure is a form of compelled speech that cannot survive First Amendment scrutiny. It goes beyond any disclaimer or disclosure that the Supreme Court has ever approved, and it is not tailored to any interest that might justify a speaker's right to decide "what to say and what to leave unsaid." *Hurley*, 515 U.S. at 573 (quotation marks omitted); *see also Riley v. Nat'l Fed'n of Blind*, 487 U.S. 781, 797 (1988) (holding that "freedom of speech" is "a term necessarily comprising the decision of both what to say and what *not* to say" (emphasis in original)). "Mandating speech that a speaker would not otherwise make," as the Code does here, "necessarily alters the content of the speech."

*Riley*, 487 U.S. at 795. In such situations, "the First Amendment direct[s] that government not dictate the content of speech absent compelling necessity, and then, only by means precisely tailored." *Id.* at 800. While strict scrutiny should apply here to this content-altering compelled speech, San Francisco's on-communication disclosure requirements cannot withstand the tailoring required under either strict or exacting scrutiny.

A. Strict scrutiny applies to San Francisco's content-based, compelled messaging

Although the Supreme Court has applied exacting scrutiny to true disclaimer and disclosure requirements, strict scrutiny must apply to the hybrid that San Francisco has created. The Supreme Court recently signaled that it may be increasing the scrutiny given to any disclosure regime. *Compare Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2383 (2021) ("*AFPF*") (Roberts, C.J., op.) (exacting scrutiny applies to disclosure requirement), *with id.* at 2390 (Thomas, J., concurring) (strict scrutiny applies to all disclosure requirements), *with id.* at 2391 (Alito, J., concurring) (withholding judgment whether strict or exacting scrutiny applies).

But even prior to *AFPF*, strict scrutiny and not exacting scrutiny was required for the hybrid of disclosure and disclaimers at issue here. Disclaimers and disclosure are terms of art, and their proper demarcation is critical to constitutionally applying them. In the jargon of campaign regulation, disclaimer statutes require that a communication state who made it—who "is responsible for the content of th[e] advertising," *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366 (2010), while disclosure statutes require that speakers report *to the government* their expenditures and contributions, *Buckley v. Valeo*, 424 U.S. 1, 63 (1976) (per curiam). So defined, disclosure and disclaimer requirements "impose no ceiling on campaign-related activities." *Citizens United*, 558 U.S. at 366. That is, a true disclaimer is short, little more than a two-or three-second statement about who made the ad. And disclosure is information that the speaker gives to the government, that it may then make available using its own resources to the public. Given that true disclosure has no effect on a

message's length, and a true disclaimer is so short, neither acts to "impose [a] ceiling on campaign-related activities," *id.*, or to "reduce[] the quantity of expression," *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 197 (2014). Given that San Francisco's hybrid of disclaimer and disclosure requirements does reduce the quantity of discussion, the City must meet strict scrutiny' demands for a "compelling interest and . . . least restrictive means." *McCutcheon*, 572 U.S. at 197.

Moreover, strict scrutiny further applies as San Francisco has devised a content-based restriction on speech, as compelling a speaker to share the government's message "necessarily alters the content of the speech." *Riley*, 487 U.S. at 795; *see id.* at 800 (requiring "precisely tailored" to a "compelling necessity"). Accordingly, the Ninth Circuit has already required strict scrutiny for similar on-communication disclosure requirements, and held that the law was unconstitutional. *ACLU of Nev. v. Heller*, 378 F.3d 979, 992 (9th Cir. 2004) (discussing "most 'exacting scrutiny'").

Under strict scrutiny, San Francisco's compelled speech requirements must "promote[] a compelling interest and [be] the least restrictive means to further [that] interest." *McCutcheon*, 572 U.S. at 197. But even under exacting scrutiny, the government must establish "a substantial relation between the disclosure requirement and a sufficiently important governmental interest." *AFPF*, 141 S. Ct. at 2383 (Roberts, C.J., opinion) (quotation marks omitted). And San Francisco's law cannot escape the doubts raised if less restrictive means exist under either of these standards. *Id.* at 2386 (majority op.) (requiring that the government "demonstrate its need for" more burdensome requirements "in light of any less intrusive alternatives"); *cf. McCutcheon*, 572 U.S. at 218 ("In the First Amendment context, fit matters[, e]ven when the Court is not applying strict scrutiny . . . .").

San Francisco's secondary on-communication disclosure requirements are not substantially related to the only applicable governmental interest, much less narrowly tailored to a compelling interest. And the requirements utterly fail any inquiry, under strict or exacting scrutiny, into whether less restrictive alternatives are available.

B. San Francisco's compelled messaging about secondary donors does not serve a substantial or compelling interest

The Supreme Court has recognized only three interests as substantial enough to save disclosure laws under exacting scrutiny: fighting actual or apparent corruption, combatting circumvention of contribution limits, and the informational interest. *Buckley*, 424 U.S. at 66-68. None of these could support San Francisco's law.

The anticircumvention interest exists only as a corollary to the anticorruption interest, and the anticorruption interest cannot exist in the context of independent expenditures, which by definition cannot pose the risk of dollars being exchanged for political favors. *See McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 352 n.15 (1995) (noting that "[t]he risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue" (citations and quotation marks omitted)); *Citizens United*, 558 U.S. at 357 (holding that the anticorruption interest does not apply to expenditures made independent of candidates); *Republican Party v. King*, 741 F.3d 1089, 1102 (10th Cir. 2013) (rejecting any "freestanding" anti-circumvention interest where the anti-corruption interest does not exist).

Moreover, the government has no interest in informing the public about whatever might strike it or the government's fancy. Disclosure laws justified under the government's informational interest must inform voters "concerning those who support" a ballot measure or candidate before the voters, *Buckley*, 424 U.S. at 81, not in doxing supporters of a speaker or organization generally. Thus courts must analyze whether there exists in a given case a "public interest in knowing who is spending and receiving money to support or oppose a ballot issue." *Sampson v. Buescher*, 625 F.3d 1247, 1256 (10th Cir. 2010); *see also Buckley*, 424 U.S. at 66 (noting interest in "where political campaign money comes from" (quotation marks omitted)); *Family PAC v. McKenna*, 685 F.3d 800, 806 (9th Cir. 2012) ("an interest in learning who supports and opposes ballot measures"). And, to ensure that disclosure requirements actually get at monetary support for a candidate or ballot measure, courts have emphasized the

importance of limiting disclosure to contributions earmarked to support such advocacy. *See Van Hollen v. Fed. Election Comm'n*, 811 F.3d 486, 497 (D.C. Cir. 2016) (using cancer society example to explain earmarking); *Indep. Inst. v. Williams*, 812 F.3d 787, 797 (10th Cir. 2016) (noting importance of earmarking); *Lakewood Citizens Watchdog Grp. v. City of Lakewood*, No. 21-cv-01488-PAB, 2021 U.S. Dist. LEXIS 168731, at *33-36 (D. Colo. Sep. 7, 2021) (same); *Indep. Inst. v. Fed. Election Comm'n*, 216 F. Supp. 3d 176, 191 (D.D.C. 2016) (three judge panel) (noting that requirements tailored to donors giving "for the specific purpose of supporting the advertisement").

The challenged provisions do not serve the informational interest. Section 1.161 forces the Committee to include a long statement about the top two donors to each of its top three donors. S.F. Code § 1.161(a)(1) (defining top donors as those giving $5,000 or more). But San Francisco does not require that the secondary donors contribute to the primary donors with the goal of supporting the Committee's communications in favor of Prop B. It does not even require that the secondary donors have knowledge, much less a suspicion, that their donations might eventually support Prop B.

Indeed, those secondary donors may be giving to the Committee's donors for any number of reasons. For example, some donors may intend to support the efforts of Ed Lee Dems to promote the representation of Asian-Pacific Islanders in San Francisco politics and leadership; to further civil rights, women's rights, and LGBT rights; to support public schools, public transportation, and local parks; and to secure access to affordable housing and health care. *See* Cheng Decl. ¶¶ 3-4. When they give the organization $5, $50, or $5,000, they may have no clue that Ed Lee Dems cares anything about Prop B, much less that their donations might help support Ed Lee Dems's donation to another committee that supports Prop B. Indeed, some Ed Lee Dems donors might oppose Prop B.

For example, when David Chiu for Assembly 2022 donated to Ed Lee Dems, it is highly unlikely that Mr. Chiu knew that Ed Lee Dems would be donating to SPB, or that his committee might be listed as a donor on one of SPB's communications. Cheng

Decl. ¶ 7. Nonetheless, in the name of informing San Francisco's voters, the disclaimer San Francisco requires would lead voters to believe that Mr. Chiu is running for another office and improperly taking positions on City issues. *Id.*

The D.C. Circuit further illustrated the point in *Van Hollen v. Fed. Election Comm'n*, 811 F.3d 486 (D.C. Cir. 2016). Upholding an FEC regulation's earmarking requirement, the court noted "the intuitive logic" that an expansive donor disclosure regime would spread misinformation. *Id.* at 497-98. The court contemplated a "not unlikely scenario" where a partisan Republican gave to the American Cancer Society's general mission "to fund the ongoing search for a cure," yet found herself reported as supporting Cancer Society ads that attacked "Republicans in Congress" whose deficit-reducing efforts would mean "fewer federal grants for scientists studying cancer." *Id.* at 497. "Wouldn't a rule requiring disclosure of [the] Republican donor, who did *not* support issue ads against her own party, convey some misinformation to the public about who *supported* the advertisements?" *Id.* (emphasis in original).[2]

The level of confusion is inevitable when secondary donors are included directly on the face of an ad, with similar billing to the primary speaker and its actual financial supporters. It is only natural to assume that individuals listed on the face of a communication support it. By forcing the Committee to include secondary donors on its communications, San Francisco misleads the public, making voters believe that the secondary donors support Prop B and the Committee's communications in support of Prop B, even though they may in fact oppose both. This not only fails to serve the informational interest, but subverts it. It undermines voters' efforts "to place [the ballot measure] in the political spectrum," *Buckley*, 424 U.S. at 67, to understand

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[2] Likewise, if the Southern Baptist Convention were to donate to the ACLU for its efforts in fighting the patentability of human genetic material, it would be an exaggeration to conclude that it supported an ad run by the ACLU in favor of legal abortion. *See* ACLU, *BRCA — Statement of Support from the Ethics & Religious Liberty Commission, Southern Baptist Convention*, https://bit.ly/3xEs8QP (noting ideological alliance on issues).

which groups and individuals in the political spectrum support and do not support the measure. *See also id.* at 81 (noting that the interest must "help[] voters to define more of the [measure's] constituencies"); *ProtectMarriage.com - Yes on 8 v. Bowen*, 752 F.3d 827, 832 (9th Cir. 2014) ("where a particular ballot measure or candidate falls on the political spectrum").

San Francisco's on-communication secondary donor disclosure falls far short of exacting scrutiny's requirement that it be substantially related to the informational interest. Accordingly, there is even less chance that it could survive strict scrutiny's requirement that it be narrowly tailored, even if San Francisco somehow demonstrated that it had a compelling interest. The requirements are unconstitutional, both facially and as applied to the Committee's speech.

C. Less restrictive means to achieve the informational interest highlight the unconstitutionality of the compelled speech requirements

Even if San Francisco could demonstrate a substantial relation to the informational interest, "a substantial relation to an important interest is not enough to save a disclosure regime that is insufficiently tailored." *AFPF*, 141 S. Ct. at 2384. Narrow tailoring is demanded "where First Amendment activity is chilled—even if indirectly—[b]ecause First Amendment freedoms need breathing space to survive." *Id.* (quotation marks omitted) (alteration in original). San Francisco's requirements directly chill the Committee's and others' speech, and the City must therefore "demonstrate its need for universal production in light of any less intrusive alternatives." *Id.* at 2386. It cannot do so.

The internet did not exist when *Buckley* upheld the Federal Election Campaign Act's disclosure provisions. We no longer live in 1976, when accessing the disclosure information required obtaining documents from Washington, D.C. and compiling information from paper records, and yet *Buckley* gave no hint of a need for on-communication disclosure. Inquisitive San Francisco voters need only visit the Ethics Commission's offices near City Hall, where all the "[c]ampaign statements are to be

open for public inspection and reproduction." S.F. Code § 1.110(a). In fact, they do not need to even leave their home or campaign office to discover their ideological opponents' doings, as the Commission is required to "make campaign statements available through its website." *Id.* And, if a list of a speaker's top contributors and its contributors' contributors were really necessary to serve an informational interest, then San Francisco might try to follow the state's example and require that speakers "maintain an accurate list of the committee's top . . . contributors," and provide that to the Ethics Commission. Cal. Gov't Code § 84223(a). The Commission could then make it publicly "available through its website." S.F. Code § 1.110(a); *see Riley*, 487 U.S. at 800 (noting that the government could "itself publish [any] financial disclosure forms it requires," thus "communicat[ing] the desired information to the public without burdening a speaker with unwanted speech").

Moreover, San Francisco cannot argue that the compelled speech is constitutional because it only results in more speech. Given speakers' limited resources, San Francisco's compelled speech requirements force speakers to decide what part of their message they will lose to make room for the City's message. The City's compelled message for the Committee will use up 100% of a 15-second internet video ad, 100% of a 30-second ad, and 53-55% of a 60-second ad, as well as a third to half the screen at the beginning of each ad for the written requirements, David Decl. ¶¶ 14-15; 100% of a two by four inch newspaper ad, about 70% of a five by five ad, and about 35% of a five by ten inch ad, *id.* ¶¶ 16-17; and about 23% of the face of an 8.5 by 11 inch mailer, *id.* ¶ 18. That is, for many ads, San Francisco forces individuals and groups to give up speaking altogether. And with respect to all ads, it violates a speaker's right to decide "what to say and what to leave unsaid." *Hurley*, 515 U.S. at 573 (quotation marks omitted). "No governmental interest that has been suggested is sufficient to justify the restriction on the quantity of political expression . . . ." *Buckley*, 424 U.S. at 55.

Nor can San Francisco argue that such on-communication secondary donor disclosure to reveal contributions that are hidden when funneled through multiple

committees. California law already requires that if a contributor gives a contribution to a committee, but that money is earmarked as a contribution to another committee or to support a ballot measure or candidate, then the money must be reported by all parties as a contribution for that final committee, ballot measure, or candidate. Cal. Gov't Code § 85704.

San Francisco might assert that the on-communication secondary disclosure is nonetheless necessary because it is easier for voters to get the disclosure from the speaker's communication than from the Commission's website. But mere "convenience" is too weak an interest to justify an infringement on core First Amendment rights. *AFPF*, 141 S. Ct. at 2387 (noting that "[m]ere administrative convenience does not remotely 'reflect the seriousness of the actual burden," and "the weakness of the [government's] interest in administrative convenience").

"The availability of the less speech-restrictive reporting and disclosure requirement confirms that a statute like the one here at issue cannot survive the applicable narrow tailoring standard." *Heller*, 378 F.3d at 995. Whether under strict scrutiny, as in *Heller*, or under exacting scrutiny, San Francisco's on-communication secondary donor disclosure fails tailoring and is facially unconstitutional.

D. San Francisco's effective proscription of shorter ads fails any scrutiny

Owing to the length of its demanded messages, the City has crossed the line from merely requiring disclaimers and disclosure to limiting how much a committee can speak, indeed to proscribing many messages. Because San Francisco in fact "reduce[s] the quantity of expression," its requirements must "promote[] a compelling interest and [be] the least restrictive means to further" it. *McCutcheon*, 572 U.S. at 197. Furthermore, the City may not rely on the informational interest to sustain its speech limits. The Supreme "Court has identified only one legitimate governmental interest for restricting campaign finances," or the speech those finances make possible: "preventing corruption or the appearance of corruption." *Id.* at 206. Put more strongly, the Supreme Court has "consistently rejected attempts to suppress campaign speech

based on other legislative objectives." *Id.* at 207.

Given that this case involves ballot measures and not candidate elections, there can be no actual or apparent risk of quid pro quo corruption. *See id.* at 208 (noting interest "confined to . . . *quid pro quo* corruption); *McIntyre*, 514 U.S at 352 n.15 (noting no corruption risk for ballot measures). Thus, San Francisco lacks any legitimate interest in limiting Plaintiffs' speech or association, and it certainly cannot demonstrate that its restrictions are properly tailored to a nonexistent interest.

Moreover, the City cannot deny that its compelled messaging effectively proscribes shorter messages. Online video advertising is one of the preferred advertising methods for "ballot measure campaigns, especially for small" ones. Sinn Dec. ¶ 5. And shorter video ads, those lasting 15 seconds or less, are becoming the preferred length for such ads. Derse Decl. ¶ 11. But San Francisco's demanded disclaimer and disclosure takes 32-33 seconds to share, David Decl. ¶ 13, ruling out the use of the shorter, preferred 15-second ads. Indeed, speakers cannot use even 30 second ads, as the City's demanded message would still require more time than the message.

And even if a speaker could afford a 60-second ad, it would be useless to getting out the speaker's chosen message. To be effective, an ad must get a viewer's attention within the first three to five seconds. Derse Decl. ¶ 12; Sinn Decl. ¶ 6. After that time, a viewer will change the channel, scroll down the page, or otherwise avoid the ad. Derse Decl. ¶¶ 12-15; Sinn Decl. ¶¶ 11-18. It is difficult to see how San Francisco's disclaimer and disclosure requirements could even be considered remotely engaging. *See* Sinn Decl. ¶16. They all follow the same format: announcing a speaker's name, a statement that funding information will follow, up to nine donors, and a statement that the donor and other financial information may be found at the Ethics Commission's website. This is not must-see TV.

Besides the spoken disclaimer swallowing at least half of the ad's dialogue, a written disclaimer must take up one third of the screen for at least the first 10 seconds. IE Reg.; Cal. Gov't Code § 84504.1(b). But the black box dominating the

message could end up consuming more than one-third of the screen for ads that have multiple primary and secondary donors, since each primary donor must be set on its own line from any other text, and each line must take up at least 4% of the screen. *Id.* The disclaimer would take up at least one third of the screen. IE Reg.; David Decl. ¶ 15. San Francisco's requirements result in internet video ads that are "unlikely to capture a user's attention," such that speakers are at best "paying for [viewers to see and hear the City's] statement and not for the campaign's message." Sinn Decl. ¶ 19.

The City's requirements similarly consume or dominate the Committee's newspaper ads. As with the video ads, the requirements for newspaper ads require a line or two stating that the Committee made the ad and announcing that donor information will follow, then one to three lines for each of the primary donors and their donors, and then a line directing readers to the Ethics Commission's website for that and other donor information. IE Reg.; S.F. Code § 1.161(a)(1)-(3); Cal. Gov't Code § 84504.2. The Committee's 2 by 4 inch ads are entirely consumed by the City's message before that message is even complete. David Decl. ¶ 16; Ex. 2. While the Committee's five by five inch ads contains enough room to finish the City's compelled message, doing so leaves little room for anything else. The City's message takes up about 70% of a five by five inch ad, using up all the space other than a banner at the top, and leaving no room to persuade voters about anything. David Decl. ¶ 16; Ex. 3.

Even for longer five by ten inch ads, the City's demanded disclosure and disclaimer "is unduly burdensome," as it "drown[s] out" the Committee's message. *Am. Bev. Ass'n v. City & Cty. of S.F.*, 916 F.3d 749, 761 (9th Cir. 2019) (Ikuta, J., concurring); *id.* at 757 (en banc). The disclaimer and disclosure requirements consume about 35% of even the Committee's longer newspaper ads. David Decl. ¶ 17. And the requirements would take up about 23% of the front face of an 8.5 by 11 inch mailer. *Id.* ¶ 18.

Thus, San Francisco cannot seek refuge for its disclaimer and on-communication disclosure requirements under previous decisions upholding disclaimers and disclosure. When San Francisco's requirements consume 23-35% of even the

Committee's longer communications, and the requirements swallow entirely the Committee's shorter communications, the City cannot claim that its requirements "'impose no ceiling on campaign-related activities,' [or that its requirements] 'do not prevent anyone from speaking'." *Citizens United*, 558 U.S. at 366 (citations omitted). Like the expenditure limits at issue in *Buckley*, San Francisco's requirements "necessarily reduce[ ] the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." *McCutcheon*, 572 U.S. at 197 (alteration in original). And, because "political speech must prevail against laws that would suppress it, whether by design or inadvertence," *Citizens United*, 558 U.S. at 340, San Francisco's restrictions are unconstitutional. Like the expenditure limits at issue in *Buckley*, they are not narrowly tailored to promoting a compelling interest. In particular, limiting speech fails to further any interest in informing the public.

But even if exacting scrutiny were applied, San Francisco's laws would be unconstitutional. Exacting scrutiny is at least equal to, if not a higher standard than the intermediate scrutiny applied, for example, to commercial speech. *Compare AFPF*, 141 S. Ct. at 2383 (requiring a substantial relation to an important governmental interest and narrow tailoring), *with Am. Bev. Ass'n*, 916 F.3d at 755-56 (discussing *Zauderer* test). And the Ninth Circuit has already held that a less burdensome law was unconstitutional under the lesser scrutiny for commercial speech.

In *American Beverage Association*, the Ninth Circuit sitting en banc addressed San Francisco's demand that advertisements for sugar-sweetened beverages carry a health warning. 916 F.3d at 753. Applying the *Zauderer* test for "compelled commercial speech," the Ninth Circuit examined whether San Francisco's disclosure requirement was "unduly burdensome." *Id.* at 756. And, as with all heightened scrutiny, the City had the burden of proof: It had to demonstrate that its law was "neither unjustified nor unduly burdensome." *Id.* The en banc court concluded that a disclosure requirement taking only 20% of the speaker's message was "not justified when

balanced against its likely burden on protected speech." *Id.* at 757. But the burden imposed in *American Beverage Association*, taking up 20% of the message, was smaller than the *least* burdensome requirement that the City now imposes on the Committee's speech. No less than in *American Beverage Association*, the City's requirements act to "'drown[] out' Plaintiffs' messages and 'effectively rule[] out the possibility of having [an advertisement] in the first place.'" *Id.* (alterations in original).

Whatever the level of scrutiny, San Francisco's burdens on political speech—drowning out or preventing messages entirely—are unconstitutional as applied to the Committee's speech. And they are likewise unconstitutional as applied to any other ads where the City swallows more than 20% of a message, as the disclosure always drowns out such messages.

E. San Francisco's compelled messaging violates Plaintiffs' freedom of association

In driving away potential donors, San Francisco's on-communication secondary donor disclosure requirements force the Plaintiffs and others to give up their First Amendment right to freely associate with others, preventing them from strengthening their voices and sharing their messages. The Supreme Court has long held that "the right of association is a basic constitutional freedom that is closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society." *Fed. Election Comm'n v. Nat'l Right to Work Comm.*, 459 U.S. 197, 206-07 (1982) (citation and quotation marks omitted). "Protected association furthers a wide variety of political, social, economic, educational, religious, and cultural ends, and is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority." *AFPF*, 141 S. Ct. at 2382 (quotation marks omitted). In particular, "compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action." *Id.* (quotation marks omitted).

As discussed above, Ed Lee Dems has donors who would be upset to have their names listed on communications advocating positions in which they have no interest

or that they oppose. Cheng Decl. ¶ 9. They would withdraw their funding, making it harder for the organization to pursue its many other goals. *Id*.

Furthermore, the disclaimer and disclosure requirements mislead the voters in a way that would undermine the organization's goals. For example, San Francisco's rules would require that David Chiu for Assembly 2022 be listed as a secondary donor on the communications. But Mr. Chiu is a defendant to this lawsuit as the City Attorney. He is not running for Assembly, nor is he inappropriately taking positions on issues. But listing him and that committee on communications here would lead voters to think otherwise, harming his reputation. And, as supporting leaders like Mr. Chiu is part of the mission for Ed Lee Dems, the organization cannot associate with SPB and support its communications.

The City's requirements thus violate Plaintiffs' freedom of association while misleading rather than informing voters. The requirements do not serve the informational interest and are unconstitutional.

## II. THE CHALLENGED PROVISIONS IRREPARABLY HARM PLAINTIFFS.

"Irreparable harm is relatively easy to establish in a First Amendment case," as a party need only "demonstrate[] the existence of a colorable First Amendment claim." *CTIA - The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 851 (9th Cir. 2019) (quotation marks omitted). That is because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *accord CTIA*, 928 F.3d at 851. "When, as here, a party seeks to engage in political speech in an impending election, a delay of even a day or two may be intolerable." *Sanders Cnty. Republican Cent. Comm. v. Bullock*, 698 F.3d 741, 748 (9th Cir. 2012) (quotation marks omitted).

Plaintiffs have demonstrated irreparable harm: Until San Francisco's restrictions are enjoined, the Committee cannot share its chosen messages, and Ed Lee Dems will not be able to contribute to and associate with committees when that might risk on-communication disclosure of its donors. Furthermore, as long as San Francisco's

compelled speech requirements are in place, Mr. David and his committee's will be restricted from speaking in future elections. David Decl. ¶ 25. And they and Ed Lee Dems will continue to be limited in their ability to associate with and support the messages of other committees. David Decl. ¶ 8; Cheng Decl. ¶ 11.

## III. THE BALANCE OF EQUITIES, AND THE PUBLIC INTEREST, FAVOR PLAINTIFFS.

"Courts have consistently recognized the significant public interest in upholding First Amendment principles." *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 2021 U.S. App. LEXIS 35760, at *29 (9th Cir. 2021). Thus, where it is likely that the First Amendment has been violated, an "injunction serves the interests of the general public by ensuring that the government's [actions] comply with the Constitution . . . because all citizens have a stake in upholding the Constitution." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quotation marks omitted); *see also Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (noting that the government "cannot suffer harm from an injunction that merely ends an unlawful" or unconstitutional practice). Accordingly, "[t]he public interest and the balance of the equities favor preventing the violation of [Plaintiffs] constitutional rights." *Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957, 978 (9th Cir. 2017) (quotation marks omitted).

## CONCLUSION

Plaintiffs' motion for temporary restraining order and for a preliminary injunction should be granted.

Dated: May 12, 2022

Respectfully submitted,

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CERTIFICATE OF NOTICE

Pursuant to Rule 65(b)(1)(B), the undersigned contacted representatives for Defendants to ask whether they would accept service of the above Notice of Motion and Motion for Temporary Restraining Order and Preliminary Injunction.

I spoke with Andrew Shen, who is currently, or has recently been, the Deputy City Attorney assigned as counsel for the San Francisco Ethics Commission (the "Commission") at the City Attorney's office, on May 10, 2022, and Mr. Shen said that he was working to consolidate service into one litigator at the City's Attorney's office. On May 11, 2022, Mr. Shen told me that Deputy City Attorney Tara Steeley would be handling the case and would have the authority to accept service on behalf of all defendants.

Ms. Steeley and I spoke on May 11, 2022. From that call, I understood that she would be accepting service for all defendants. I emailed Ms. Steeley a summary of my understanding of the conversation, and she responded that she would accept service of summons for Defendants David Chiu and the City and County of San Francisco, but that she could not accept service for Defendant Chesa Boudin and Defendant Commission.

After the email from Ms. Steeley, I again called Mr. Shen. Because of Mr. Shen's assignment to the Commission, I understand that he is most likely to have the authority to accept service on behalf of the Commission. I left a voicemail asking whether Mr. Shen or someone else in the City Attorney's office would represent the Commission and accept service. Mr. Shen has not yet responded.

I also contacted the Commission to speak with either Executive Director LeeAnn Pelham or Chief of Enforcement Pat Ford. I was directed to Mr. Ford with an indication that he could handle all inquiries about service. Mr. Ford did not answer his phone, and I left a voicemail asking who would accept service on the Commission's behalf. Mr. Ford responded by email on May 12, 2022, that the City Attorney's office handles litigation against the City and that Plaintiffs should contact Ms. Steeley and

Mr. Shen.

Defendant Chesa Boudin is represented by counsel for Plaintiffs in other matters, and we regularly communicate. After Ms. Steeley's refusal to accept service for Mr. Boudin, I spoke with Mr. Boudin by phone to ask who would accept service in the District Attorney's office of the above Motion. Mr. Boudin indicated that the City Attorney should accept service on behalf of him and his office, and indicated that he would call the City Attorney assigned to the District Attorney's office to discuss service at his earliest convenience. Mr. Boudin has not yet been able to provide me with any additional information.

Because the City Attorney's office seems to be the only entity which can accept service for Mr. Boudin and the Commission, I called Ms. Steeley again on May 12, 2022. Ms. Steeley did not answer her phone, and I left a voicemail asking whether she might reconsider accepting service on behalf of all defendants to avoid having three separate Deputy City Attorneys handling service. Ms. Steeley has not yet responded.

We have sent the Complaint and Motion for Temporary Restraining order, along with their accompanying documents, to Ms. Steeley, for Defendants Chiu and San Francisco. We have also sent them to the main email address at the District Attorney's office, districtattorney@sfgov.org, and to the main email address for the San Francisco Ethics Commission, ethics.commission@sfgov.org.

All the Defendants know that the lawsuit has been filed, and copies of the Complaint and Motion have been sent to all Defendants. All Defendants have adequate notice of the Complaint and Motion, and the only point of contention is who will accept official service. Further notice of the Motion should not be required.

Dated: May 12, 2022

*/s/ Nicholas Sanders*
Nicholas Sanders (SBN 307,402)
*Counsel for Plaintiff*

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing by emailing it to the following:

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Dated: May 12, 2022

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